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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 376

THOMAS O'DONNELL and MARY O'DONNELL,
Petitioners,

vs.

CHICAGO LAND CLEARANCE COMMISSION,
a Municipal Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Your petitioners, Thomas O'Donnell and Mary O'Donnell, appellants below, respectfully pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois, entered on May 20, 1957.

Opinion Below:

The opinion of the Supreme Court of Illinois, dated March 20, 1957 rehearing denied May 20, 1957, is reported at 11 Ill. 2d 111 (Advance Sheets). It is set out in Appendix A of this petition.

Jurisdiction:

The jurisdiction of this Court is invoked under Title 28, U. S. Code, Sec. 1257 (3). The judgment of the Supreme Court of Illinois is dated and was entered March 20, 1957. The date of the order denying the rehearing was May 20, 1957.

Questions Presented For Review:

The principal question is whether a judgment of the Circuit Court of Cook County, affirmed in the Supreme Court of Illinois, was without due process of law and in violation of the rights of petitioners under the Fourteenth Amendment to the Constitution of the United States.

Due process of law was denied petitioners in that petitioners were never able to get certain questions decided in the Supreme Court of Illinois, that Court refusing to consider certain points made by petitioners on the ground that petitioners had failed to abstract certain portions of the record, the Supreme Court of Illinois disregarding the arguments of petitioners to the effect that:

1. Petitioners were individuals of moderate means opposing a multi-million dollar municipal Corporation,

2. The lower Court had allowed respondent to glut the record with 34 voluminous exhibits, over the objections of petitioners.

3. No rule of the Supreme Court of Illinois provided that before a point directed to a certain portion of the record could be considered that part of the record must be abstracted.

Due process of law was denied petitioners in the Supreme Court of Illinois in that the Supreme Court of Illinois disregarded the arguments of petitioners to the effect that respondent had failed to make out a prima facie case and arbitrarily placed the responsibility for proving respondent's case upon the petitioners.

Due process of law was denied petitioners in that the Supreme Court of Illinois refused to decide certain points raised by petitioners upon the spurious ground that the

same points had been decided in a previous case, when in truth and in fact the Supreme Court of Illinois in that previous case had stated it would not decide such point.

Due process of law was denied petitioners in that the Supreme Court of Illinois arbitrarily rejected petitioner's arguments that conditions had changed, making it unnecessary to condemn the property of petitioner and others, and unreasonably surmising that petitioners and other property owners were not interested in paying taxes on their property until it was in danger of being taken away from them by eminent domain.

Due process of law was denied petitioners in that the Supreme Court of Illinois refused to take judicial notice of certain universally accepted and well-known facts and arbitrarily and unreasonably determined that such facts did not exist because petitioners had offered no evidence thereof.

United States Constitution, Article and Section, and Illinois Statute involved.

The part of the United States Constitution involved is that part of Amendment XIV, Section 1, which provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

That part of the Statutes of the State of Illinois involved is that portion of the statute known as "Blighted Areas Redevelopment Act," Secs. 63 to 91, chapter 67½, Ill. Rev. Stats. 1955, which provides, at Sec. 65 (L),

> "Blighted Vacant Area Redevelopment Project" means a project involving (1) predominantly open

platted urban or suburban land which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or taxes or special assessment delinquencies exceeding the fair value of the land, substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses."

Statement of Case:

I.

The legislature of the State of Illinois in 1947 enacted a statute providing for the acquisition of blighted areas by eminent domain. (Ill. Rev. Stats., 1947, Ch. 67½, Secs. 63 to 91).

In 1949 the legislature enlarged this statute by providing that vacant land could also be blighted and being so blighted could also be acquired by eminent domain.

In this 1949 statute the Illinois legislature defined a "blighted vacant area".

The pertinent section of said statute is as follows, Ill. Rev. Stats., 1949, Ch. 67½, Sec. 65 (L):

> "(L) "Blighted Vacant Area Redevelopment Project" means a project involving (1) predominantly open platted urban or suburban land which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or taxes or special assessment delinquencies exceeding the fair value of the land, substantially impairs or arrests the sound growth of the Community and which is to be developed for predominantly residential uses, . . ."

The petitioners bought a vacant residential lot on the South side of the City of Chicago, Illinois in March, 1951. They applied for a building permit from the City

of Chicago and were granted one July 11, 1951. This permit was revoked without explanation on August 10, 1951.

Acting under the purported authority of the 1949 Statute the respondent, the Chicago Land Clearance Commission, declared that the forty acres located at 79th Street and South Western Avenue, in Chicago, Illinois, was a blighted vacant area within the meaning of the statute. Included in this area was the petitioners' lot. This declaration was made by the respondent on July 26, 1950.

On September 19, 1951 a proceedings designated a quo warranto proceedings was started to test the validity of the statute. The statute was upheld as constitutional in *People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600, the opinion of the Supreme Court of Illinois being rendered March 23, 1953.

On June 7, 1955, five years after its determination of July 26, 1950, the Chicago Land Clearance Commission filed suit in the Circuit Court of Cook County, Illinois to acquire the property of petitioners, and others.

Petitioners contended that the Chicago Land Clearance Commission had no right to take the property of petitioners. The Circuit Court of Cook County overruled this contention and the Supreme Court of Illinois affirmed the lower court.

ARGUMENT.

In *People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600, the quo warranto case which upheld the validity of the statute, it was urged that if the Chicago Land Clearance Commission was to make a determination that an area was a blighted area because tax delinquency exceeded the fair value of the land, the property owner was entitled, under the due process of law provisions, to notice and hearing on the question as to the fair value of the land.

The Supreme Court of Illinois in the *Gutknecht* case ruled that the property owner could get such a hearing in the actual eminent domain proceeding.

In the *Gutknecht* case, at P. 616 and 617 of the opinion the Supreme Court of Illinois stated:

> "The complaint appears to be that in the first instance, in comparing the "fair value" of land under consideration with accumulated tax delinquencies, the Commission ascertains "fair value" without notice or hearing to owners or other interested persons. But, as the Act makes clear, "fair value" is relevant only in appraising the extent of tax and special assessment delinquencies, in the course of determining the causes of the unmarketability of an area under consideration. The decision of a condemning body to acquire property by eminent domain is not a taking of the property *and no question of due process is presented.* The taking can, of course, only be accomplished by the filing of a petition and the ascertainment and payment of compensation for the property. (*Chicago, Burlington and Quincy Railroad Co.* v. *Cavanaugh*, 278 Ill. 609, 617.) A complete answer to plaintiff's contention is found in *Zurn* v. *City of Chicago*, 389 Ill. 114, 133, where this Court, in rejecting a like contention, said: "The

> Court, in any condemnation suit instituted by a redevelopment corporation, will determine whether *these conditions precedent* to the exercise of the right have been complied with. The hearing, therefore, in the suit in which it is sought to acquire property by eminent domain, gives to the property owner the right and the opportunity to be heard upon all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law."

Proceedings to condemn the area in question, including petitioners' property, were started in the Circuit Court of Cook County, Illinois on June 7, 1955, almost five years after respondent had determined to acquire it by its resolution of July 26, 1950.

In the Circuit Court of Cook County, Illinois the petitioners contended that respondent had never determined the fair value of the land, but instead had determined that the land was blighted because tax delinquency exceeded the *assessed* value of the land, a value for tax purposes having no bearing on and being only a fraction of fair value.

The Supreme Court of Illinois, in passing upon petitioners' contention in their appeal in the instant cause, rejected the contention of petitioners to the effect that due process of law required that the Chicago Land Clearance Commission make a determination of the fair value of the land, and placed the onus of proving the fair value of the land upon the petitioners, holding that "defendants offered no evidence as to the value of the area." (Rec. p. 7).

The Supreme Court of Illinois then went on to hold that even if no finding was made to the effect that tax delinquency exceeded the fair value of the land such a finding was not essential, holding that an area could be

a blighted vacant area if certain other enumerated conditions, obsolete platting, diversity of ownership and deterioration of site improvements existed.

It was pointed out that the Chicago Land Clearance Commission had never determined the fair value of the land; it was pointed out that the Chicago Land Clearance Commission had admitted that the site improvements, sewers, were in "excellent condition."

It was pointed out that the legislature of the State of Illinois has failed to define the terms "obsolete platting" and "diversity of ownership" and such terms did not have an accepted definition, and therefore to delegate power to acquire property by eminent domain because of "obsolete platting" and "diversity of ownership" amounted to an unconstitutional delegation of legislative power without setting up sufficient standards.

To this the Supreme Court of Illinois in its latest opinion in petitioner's appeal, held that it decided such question in *People ex rel Gutknecht* v. *City of Chicago,* 414 Ill. 600.

It is respectfully submitted that in the opinion in the *Gutknecht* case the Supreme Court of Illinois did not determine such question, holding only that the term "tax delinquency exceeding the fair value of the land" set up a sufficient standard and never passing on the question that the terms "obsolete platting" and "diversity of ownership" set up proper standards for a determination as to what constituted a blighted vacant area.

Thus, the Supreme Court of Illinois, in its opinion in the *Gutknecht* case, told the property owners that the fact of tax delinquency exceeding the fair value of the land could be determined in an eminent domain case and it

failed to rule on the question whether or not the terms "obsolete platting" and "diversity of ownership" set up proper standards. Then the Supreme Court of Illinois held, in Petitioner's Appeal, that the situation of tax delinquency exceeding the fair value of the land was not essential, and it stated that it had ruled in the *Gutknecht* case that the terms "obsolete platting" and "diversity of ownership" set up sufficient standards and it would not rule on such questions in petitioners' appeal when in fact it had never made any such ruling in the *Gutknecht* case.

In short, petitioners and other property owners were told by the Supreme Court of Illinois in the *Gutknecht* case that they could have their day in Court in an actual eminent domain proceedings wherein it could be demanded that the condition precedent to the exercise of the right of eminent domain, to-wit, the existence of tax delinquency exceeding the fair value of the property, must be proved.

Then, in the instant case, the Supreme Court of Illinois, not only did not require the respondent, Chicago Land Clearance Commission, to establish tax delinquency exceeding the fair value of the land as a condition precedent but reversed itself and held that it was not a condition precedent, stating in its opinion:

> "It is clear from the reading of the act as a whole that a finding that taxes or special assessment delinquencies exceed the fair value of the land is not essential to such a determination."

Thus, petitioners are still groping in a "legal jungle" looking for due process of law, now being told that their property can be taken for "obsolete platting," whatever that is, and "diversity of ownership", whatever that is.

2.

Petitioners made the point that the Chicago Land Clearance Commission determined that the area was a blighted vacant area on July 26, 1950 and did not file in Court a petition to condemn until June 7, 1955.

Petitioners urged that such a determination, because of the lapse of almost five years, was obsolete, and could not be used as a basis for the acquiring of petitioner's property.

The Supreme Court of Illinois, in its opinion, stated arbitrarily that "while the period that elapsed was long, we do not think that it was unreasonable under the circumstances".

It is submitted that due process of law requires that the acquiring of property by eminent domain be accomplished with reasonable speed.

To stigmatize a man's property as "blighted" and then to stall and dawdle for five years before doing anything to acquire it deprives him of a valuable right.

To pass upon petitioners' objections, as the Supreme Court of Illinois did, by stating that "while the period that elapsed was long, we do not think that it was unreasonable under the circumstances," without stating any reasons why the Supreme Court of Illinois did not think it was unreasonable under the circumstances, does not decide anything. To petitioners' arguments that the housing shortage had been eliminated in the five years of respondent's stalling around the Supreme Court of Illinois refused to take judicial notice of this elimination of the housing shortage, as evidenced by the ending of rent controls in 1953, and the tremendous home construction all over the United States, and the Supreme Court of Illi-

nois told petitioners, in its opinion, that they hadn't proved that which required no proof.

3.

When the petitioners did prove that tax delinquencies had been eliminated betwen 1950 and 1955 the Supreme Court of Illinois saw fit to hold that fact against petitioners, stating in the opinion:

> "The chronology of events strongly suggests that the sudden interest in clearing up back taxes was generated by the Commission's determination, and in any case what is relevant is the situation as it existed when the Commission made its determination."

Thus, the Supreme Court of Illinois says in its opinion, to the petitioners, you didn't prove conditions have changed, and even if they have changed we think it suspicious and even if you have established that conditions have changed we now come to the conclusion that such changes are irrelevant.

4.

In the lower court the respondent glutted the record by putting in evidence 34 voluminous exhibits.

Petitioners objected to the admitting of these exhibits in evidence.

Petitioners offered in evidence only four exhibits, each simple one-page documents.

The lower court even admitted into evidence the 1923 Comprehensive Zoning Ordinance of the City of Chicago.

The lower court even admitted into evidence the first redevelopment plan of respondent Chicago Land Clearance Commission, although this plan had been adandoned by respondent.

The second plan of redevelopment was attacked by petitioners.

This plan was not abstracted by petitioners. To abstract this plan would cost a great deal of money.

In their brief petitioners craved the indulgence of the Court and reminded the Supreme Court of Illinois that there was no rule of that court which said that the Supreme Court of Illinois would not consider a point unless that portion of the record to which such point referred was abstracted.

Even the attorneys for the respondent recognized that to disregard petitioners' argument because this portion of the record was not abstracted was to "indulge in technicalities."

But the Supreme Court of Illinois, disregarding the circumstances of a multi-million dollar municipal corporation aligned against a small property owner, disregarding the fact that such plan was in the record, and disregarding the right of these small property owners to their day in Court, refused to consider the points urged by petitioners with respect to the Second Redevelopment Plan, stating curtly, in its opinion "Because the plans have not been abstracted we do not discuss these issues."

It is submitted that this amounted to a denial of due process of law.

CONCLUSION.

For foregoing reasons this petition for a writ of certiorari should be granted, the affirmance of the judgment of the Circuit Court of Cook County, Illinois by the Supreme Court of Illinois should be reversed and the judgment of said Circuit Court of Cook County, Illinois should be set aside.

Respectfully submitted,

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DANIEL A. GALLAGHER,
Of Counsel.

APPENDIX A.

The opinion of the Supreme Court of Illinois in the instant case, Docket No. 34263, January Term, 1957, *Chicago Land Clearance Commission, Appellee,* v. *Quinn Home Builders (Thomas O'Donnell and Mary O'Donnell, Appellants)* 11 Ill. 2d 111 (Advance Sheets).

MR. JUSTICE SCHAEFER delivered the opinion of the court:

This is an appeal from a judgment of the circuit court of Cook County in an eminent domain proceeding under the Blighted Areas Redevelopment Act of 1947 as amended in 1949. (Ill. Rev. Stat. 1953, chap. 67½, pars. 63-91.) The "blighted vacant area" in which the defendants' property is located lies between West Seventy-seventh Street, South Western Avenue, West Seventy-ninth Street and South Rockwell Street, in the city of Chicago. It is the area that was before this court in *People ex rel. Gutknecht* v. *City of Chicago,* 414 Ill. 600.

Defendants do not attack the adequacy of the verdict returned by the jury. Rather they contend that the court erred in overruling their traverse to the petition to condemn and in denying their post-trial motion to vacate the judgment and dismiss the petition. The grounds urged are (1) that the Commission's determination that the area was a blighted vacant area was contrary to the express provisions of the act, (2) that the determination, which was made on July 26, 1950, could not reasonably support a petition to condemn filed in June, 1955, (3) that the act is unconstitutional in that it fails to define the term "blighted vacant area" with sufficient precision.

Defendants' third ground has been disposed of by our decision in *People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600, in which the constitutionality of the act was sustained against an identical attack.

The right of a land clearance commission to proceed under the statute with respect to a blighted vacant area depends on a determination that the particular area impairs or arrests the sound growth of the community, "because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or taxes or special assessment delinquencies exceeding the fair value of the land, * * *." (Ill. Rev. Stat. 1953, chap. 67½, par 65.) Such a determination was made in this case by the Chicago Land Clearance Commission, and it was approved by the city council and the State Housing Board. Documents so showing were received in evidence, and they established, *prima facie*, the authority of the Commission to acquire the land by eminent domain. *Decatur Park District* v. *Becker*, 368 Ill. 442; *Forest Preserve District* v. *Kean*, 298 Ill. 37.

Defendants argue that the Commission's determination that the area in question is a blighted vacant area is fatally defective because it is based upon a finding that tax delinquencies exceed the "assessed value" of the land, instead of its "fair value" as the statute requires. But neither the Commission's determination of July 26, 1950, the ordinance of the city of Chicago approving it, dated July 11, 1951, nor the resolution of the State Housing Board approving it, dated the same day, contains any reference to the assessed value of the land. Each of them refers to "taxes or special assessment delinquencies exceeding the fair value of the land."

The reference to assessed value upon which defendants rely is contained in a pamphlet report made to the Com-

mission by its planning division. Defendants ask us to read this report, which was introduced into evidence by the Commission over defendants' objection, together with the Commission's findings, and to conclude that the findings should be understood as speaking of the assessed value of the land instead of the fair value. In our opinion the inference that defendant seeks to draw from the pamphlet report is unsufficient to vitiate the accuracy of the Commission's statement of its findings. Def ndants offered no evidence as to the value of the area, or as to the total amount of delinquent taxes, special assessments, penalties and interest. Neither of those figures appears in the record. The pamphlet report, which states that "in the area as a whole, delinquencies exceed assessed value by almost $6300," does not purport to deal with interest and penalties, although on more than one third of the lots no taxes had been paid for more than 20 years.

But even if the Commission's findings concerning tax delinquencies had contained an express reference to the assessed value of the land, its determination that the area is a blighted vacant area within the meaning of the act would not for that reason be defective. It is clear from a reading of the act as a whole that a finding that taxes or special assessment delinquencies exceed the fair value of the land is not essential to such a determination. The question for the Commission to determine is whether the area is one that impairs or arrests the sound development of the community by reason of certain enumerated conditions, stated disjunctively. Tax delinquency is only one of these conditions.

In our opinion defendants have not sustained their argument that the Commission's determination of July 26, 1950, could not reasonably support a petition for condem-

nation filed in June, 1955. Section 14 of the statute as it stood between these dates conditioned the Commission's authority to exercise the right of eminent domain upon presentation of a plan for redevelopment of the property by an eligible purchaser, and approval of that plan by the Commission, the governing body of the municipality and the State Housing Board. Ill. Rev. Stat. 1953, chap. 67½, par. 76.

An acceptable redevelopment plan was presented to the Commission on June 11, 1951, and was approved on that date. The State Housing Board and the Chicago city council approved the plan on July 11, 1951. On September 19, 1951, a quo warranto action was filed, challenging the Commission's power to proceed under the Redevelopment Act as amended in 1949. It was claimed that the act was unconstitutional in several respects. A final determination was not reached until March 23, 1953, when this court sustained the Redevelopment Act as amended against the claims of unconstitutionality. (*People ex rel. Gutknecht* v. *City of Chicago*, 414 Ill. 600.) The original redevelopment plan was withdrawn, and a new plan was submitted to the Commission and approved September 8, 1954. The approval of the Chicago city council was secured on November 4, 1954, and that of the State Housing Board on November 17, 1954. Section 14 of the act provides that upon these approvals the Commission may proceed to acquire the property "by gift, purchase or condemnation." (Ill. Rev. Stat. 1955, chap. 67½ par. 76.) The Commission then negotiated with the owners for the purchase of the property, and finally, in June of 1955, filed its petition to condemn those parcels it was unable to purchase. While the period that elapsed was long, we do not think that it was unreasonable under the circumstances, or that the delay can fairly be ascribed to any lack of diligence on the Commission's part.

But defendants insist that the underlying factors that led to the determination of July 26, 1950, have changed sufficiently during the intervening period to make that determination obsolete for purposes of the present proceeding. They suggest that because of an increase in available housing, the proposed redevelopment is no longer necessary, but they did not offer any evidence to that effect. Their main contention turns on the fact that through a multitude of tax foreclosure suits the tax delinquencies that existed on July 26, 1950, have largely been eliminated. We think this change in the tax delinquent status of the area is irrelevant. The chronology of events strongly suggests that the sudden interest in clearing up back taxes was generated by the Commission's determination, and in any case what is relevant is the situation as it existed when the Commission made its determination.

The final section of defendant's brief is designated "Comment on the Redevelopment Plans." In it defendants criticize certain aspects of the plans. The Commission challenges defendants' standing to advance these objections and the authority of the court to consider them, citing *State* v. *Land Clearance for Redevelopment Authority*, 364 No. 947, 270 S.W. 2d 44, 56; *Balsamo* v. *Providence Redevelopment Agency*, (R.I.) 124 A. 2d 238, 241. Because the plans have not been abstracted we do not discuss these issues.

The judgment of the circuit court of Cook County is affirmed.

JUDGMENT AFFIRMED.

APPENDIX B.

Final Orders of Supreme Court of Illinois.

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here that neither in the record and proceedings aforesaid, nor in the rendition of the judgment is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, Be Affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellee recover of and from the said Appellants costs by it in this behalf expended, to be taxed, and that it have execution therefor. Entered on March 20, 1957.

On May 20, 1957 the following order was entered:

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.